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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,498	05/10/2001	Gary D. Jerdee	71163	7129

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02/05/2003

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EXAMINER

AFTERGUT, JEFF H

ART UNIT

PAPER NUMBER

1733

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/852,498	JERDEE ET AL. <i>MAF</i>	
	Examiner	Art Unit	
	Jeff H. Aftergut	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 9, 10, 12, 13, 15, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taft et al in view of either one of PCT 98/38376 or PCT 98/38375 further in view of Ballard for the same reasons as expressed in paper no. 4, paragraph 8 further taken with McGraw-Hill Dictionary of Scientific and Technical Terms, Third Edition, 1984 (edited by Parker), newly cited.

The references previously cited are discussed in full detail in paper no. 4, paragraph 8. It should be noted that the reference to Taft et al suggested that those skilled in the art at the time the invention was made would have included an extruded adhesive layer including a copolymer of ethylene and butyl acrylate. The reference additionally suggested that the adhesive composition would have included a vulcanized rubber (column 3, lines 28-60). Applicant's claim as amended required that the copolymer of ethylene and butyl acrylate was mixed with an elastomer. The applicant is advised that rubber compounds were well recognized as elastomers as evidenced by McGraw-Hill Dictionary of Scientific and Technical Terms, Third Edition. More specifically, applicant is referred to the definition of rubber which states that the term is generic for elastomer and the term elastomer which specifically refers to a synthetic rubber. Clearly, the rubber material of Taft would have been seen as an elastomer within the scope of the meaning of the term. Additionally, the reference to Taft itself refers to the rubber as elastomer rubber (column 3, line 35. The applicant has amended the claims to recite the language that the adhesive "consists essentially of" the specified copolymer and at least one additional polymer

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which included the elastomers. The applicant is advised that this language adds to the claim that the scope of the adhesive is limited to those materials that do not materially affect the basic and novel characteristics of the claimed composition, see MPEP 2111.03. The inclusion of actactic polypropylene in the hot melt composition of Taft et al is not seen as a component which materially affected the basic and novel characteristics of the claimed adhesive composition. Note that the reference to Taft et al is using the adhesive in a similar manner to that of applicant as an adhesive composition for securing a backing to a tufted fabric. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the adhesive composition of Taft et al which included the specified ethylene butyl acrylate and elastomer as evidenced by McGraw-Hill Dictionary of Scientific and Technical Terms, Third Edition, wherein the adhesive was extruded upon the backing as suggested by either one of PCT 98/38376 or PCT 98/38375 and wherein the layers were pressed together with the specified nip roller arrangement as suggested by Ballard.

3. Claims 11, 14, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with Kerr for the same reasons as expressed in paper no. 4, paragraph 9.

Election/Restrictions

4. Applicant's election with traverse of Group I, claims 9-20 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that there is no serious search burden associated with the examination of claim 21 with claims 9-20. This is not found persuasive because as expressed in paper no. 4, there is an additional search burden associated with the search of the recycling and/or reclaiming areas of class 156 (subclass 94, for example) which would be

additionally required for a complete search of the invention of Group II, while Group I does not require such a search. Applicant has admitted on the record that the inventions are distinct.

Additionally, applicant is advised that it is applicant who should cancel the non-elected claim in the subsequently filed amendment.

The requirement is still deemed proper and is therefore made FINAL.

5. This application contains claim 21 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Response to Arguments

6. Applicant's arguments with respect to claims 9-20 are have been considered but are moot in view of the new ground(s) of rejection.

The applicant argues that the claimed invention has been amended to overcome the rejection. As noted above, it is not believed that the amendment presented by applicant has overcome the previously submitted rejection. The applicant argues that the reference to Taft discloses a hot melt adhesive that is useful as a backsizing for tufted carpets which is a hot melt adhesive which was substantially free of wax consisting of 5-50% copolymer of ethylene and vinyl acetate and/or alkyl acrylate, 10-85% atactic polypropylene and 10-50% of vulcanized rubber. The applicant argues that Taft does not teach or suggest the adhesive blend which consists essentially of ethylene methyl acrylate copolymer and a second polymer as listed in the claim "which does not include vulcanized rubber". This is not persuasive. First, the copolymer of

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the claim can be either an ethylene methyl acrylate or an ethylene n-butyl acrylate. Taft et al clearly envisioned the use of a copolymer of ethylene and alkyl acrylate which was an ethylene butyl acrylate copolymer, see column 4, lines 60-63. Additionally, the second polymers listed in the claims included “elastomer”. As addressed above, vulcanized rubbers are “elastomers” within the art recognized meaning of the term. Certainly, the reference suggested the specified combination of copolymer plus additional polymer. The applicant’s argument that the claimed composition does not include vulcanized rubber is not understood because elastomer generically would have included vulcanized rubber. Additionally, as noted above, the inclusion of the atactic polypropylene does not materially affect the basic and novel characteristics of the composition because the composition was still suitable as an adhesive composition whether the material was present or not for securing a backing to a carpet.

The applicant argues that PCT ‘375 and ‘376 disclose a carpet prepared by extrusion coating an adhesive wherein the primary backing, adhesive and nonwoven scrim were pressed together between a nip roll and a chill roll. Applicant argues that the polymer composition employed by Ballard is different from that claimed as well. The applicant is advised that the references of Ballard as well as either one of PCT ‘375 and ‘376 were not cited for their specific adhesive composition or for modification of the adhesive composition of Taft et al, rather the references were cited to show that those skilled in the art of carpet making (wherein an adhesive was extruded and used to join a tufted fabric to a backing) would have known to employ a nip roller arrangement to control the pressure of the bonding operation as well as ensure that an adhesive bond was actually developed between the backing and the tufted fabric. Applicant does not dispute these teachings, but rather suggested that these references do not cure the deficiencies

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in the composition of Taft et al. however, because there is no deficiency in the adhesive composition of Taft et al as discussed in detail above, it is believed that the prior art rejection is appropriate.

The applicant also argues that the reference to Kerr did indeed suggest a nip roller arrangement with the specified hardness for the rubber covered roll, however expresses that the reference did not cure the deficiency relating to Taft and the adhesive composition. As expressed above, there is no deficiency with the Taft reference and therefore the applicant's arguments have not been found to be persuasive.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

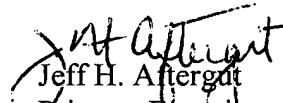
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
January 27, 2003